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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/171117

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Department of Human Services in regard to Medical Assistance, a hearing was held on February 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner is disabled and therefore eligible for Medical Assistance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Milwaukee County.
2. The petitioner applied for Medicaid alleging disability onset as of June 4, 2015. The application was forwarded to the Disability Determination Bureau (DDB). The DDB found that the petitioner was not disabled as the Medicaid program uses that term. The DDB so notified the petitioner via letter dated September 25, 2015. The petitioner sought reconsideration, but the DDB affirmed its original determination.

3. The petitioner has applied for the Social Security Administration's (SSA) SSI and/or SSDI, but was denied. The most recent denial was on December 23, 2015. The petitioner states that he is in the process of appealing that denial to the Social Security Administration; however, a DDB determination specialist informed the undersigned ALJ that they do not have an appeal for this petitioner.
4. The petitioner is currently has medical coverage.

### **DISCUSSION**

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4.* Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a State Medicaid (MA) agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
  - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

*42 CFR 435.541(c)(4)(emphasis added).*

Here the petitioner has applied for Social Security Administration (SSA) benefits and has been denied those benefits. The petitioner's Medicaid application is within 12 months of the most recent SSA denial. Thus the Division of Hearings and Appeals does not have the authority to make a finding as to the petitioner's disability.

Despite the above, it was noted at the hearing that the petitioner has medical coverage. The petitioner was not concerned about Medical Assistance, but rather concerned about the denial from SSA. He is interested in obtaining financial support. At this point in time, he stated that he was financially eligible for BadgerCare Plus coverage. This is another form of Medicaid benefits. I urge the petitioner to follow up with the DDB. The DDB stated that they do not have an SSA appeal. The petitioner should determine whether or not he can still file a federal appeal. If he is beyond the time limits, he must submit a new application for federal SSI or title 16 benefits.

### **CONCLUSIONS OF LAW**

The Division of Hearings and Appeals does not have the authority to make a determination the merits of Petitioner's Medicaid disability based application where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 12th day of February, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 12, 2016.

Milwaukee County Department of Human Services  
Disability Determination Bureau